

OGC Has Reviewed

25 April 1973

STATSPEC

MEMORANDUM FOR: Deputy Chief, Production Group [REDACTED]

SUBJECT: Analysis of Recent Amendments to Soviet Copyright Law

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REFERENCE: Memo to OGC [REDACTED]
dtd 30 March 73, Subj: Soviet Copyright Property Rights

1. Paragraph 3 of referent memorandum requests the opinion of this Office on the possible effect of recent Soviet copyright law amendments on [REDACTED]. Because of the sweeping nature of the proposed revision of Soviet copyright law, a general analysis of the amendments follows.

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2. The recently published amendments of the Soviet Civil Code sections dealing with copyright administration (Sections 96-105) have changed Soviet copyright law in several significant aspects, particularly in the area of translations, territorial scope and authors' rights. These changes, published on 21 February 1973, are scheduled to take effect on 1 June 1973.

3. Section 102--Translations: Soviet law has traditionally provided for freedom of translation of an author's work. The theory has been that the translation itself was a new creation on a plane with any other literary work and was itself copyrightable. For instance, the Soviet Federal Copyright Act of 1928 in Section 9(a) listed translation of another person's work into another language as a non-infringing use; and Section 102 of the Principles of Civil Legislation of 1961--hereinafter referred to as the 1961 Act--continued to provide for freedom of translation but amended the 1928 Act by requiring the

translator to notify the author of the translation "to ensure respect for the integrity and spirit of the work." Although not spelled out, the author presumably could enjoin a translator from publishing a distorted version of his work.

4. The recent legislation abolishes freedom of translation. Effective 1 June 1973, Section 102 provides that translation of a work into a foreign language for the purpose of publishing will be permitted only with the consent of the author or his legal representatives, domestic or foreign, or "competent USSR organs." Exactly how the language "for purposes of publishing" will be construed is not yet clear, but translation and publication of a Soviet-copyrighted work without securing consent in accordance with Section 102 would clearly be a violation of the new copyright law and could possibly result in a suit for copyright infringement and/or unfair competition. Whether a distinction will be made between publishing for profit and publishing for non-profit cannot yet be determined.

5. Section 103--Exceptions to Copyright Infringements:
Section 103 of the 1961 Act listed cases in which certain works could be used without the consent of the author and without payment of royalties. As examples, free publication was permitted in the following cases:

(a) reproduction of scientific, literary and artistic works in scientific and critical journals and in popular political and social works;

(b) communication in periodicals, in cinema, on radio and television, of published literary, scientific and artistic works; and

(c) reproduction in newspapers, on radio and television and in movies, of public speeches and debates and of published literary, scientific and artistic works.

6. Items (a) and (b) remain unchanged by the new legislation and continue to be exceptions to copyright infringements. In item (c), however, the words "in newspapers" have been deleted and a separate paragraph (Section 103(5)) is now devoted to newspapers. Section 103(5)

permits the printing in newspapers of publicly delivered speeches and reports, as well as works of literature, science, and art published in the original and in translation. Taken literally, this section seems to say that a newspaper may freely republish almost anything without the consent of the author, but that a publication other than a newspaper can print a public speech, for instance, only with the consent of the author and for a fee. The exact meaning of this new section will have to be clarified by Soviet practice.

7. Another new paragraph (Section 103(7)) permits the free non-profit reproduction of printed works in scientific, scholarly and instructional fields. This section will be particularly beneficial to underdeveloped nations and is in accord with proposed revisions of the Universal Copyright Convention set forth at the Paris meeting in 1971, which was convened to discuss means of accommodating the publishing needs of developing nations.

8. In cases where Section 103 works are permitted to be used without the consent of the author and without the payment of royalties, it is required that the author's name, the work used, and the source be mentioned.

9. Section 97--Territorial Scope: Article 97 of the 1961 Act vested copyright for a work published or unpublished in the USSR in the author and his heirs (but not in other successors in law), irrespective of their nationality, and in Soviet citizens and their heirs for works first published abroad. Copyright protection for non-Soviet citizens was not recognized except as provided in treaties concluded between the USSR and other countries. This provision was meaningless, however, inasmuch as the USSR never was a party to a multi-national international copyright treaty. As a result, foreign authors received no protection in the USSR. The 1973 legislation goes much further than any previous copyright law by extending copyright protection to the author and his successors, regardless of their citizenship, as well as to any legal representative of the author. Copyright for non-Soviet citizens is recognized for a work published for the first time abroad in accordance with the international agreements to which the USSR is a party.

10. Section 97 also extends copyright protection in the USSR to foreign legal representatives of Soviet authors in cases where the copyright has been assigned to them. Thus, foreign publishing firms acting as legal representatives of Soviet authors are entitled to copyright protection in the USSR--and by extension to copyright protection in any country belonging to the Universal Copyright Convention.

11. Sections 98 and 101--Authors' Rights: The Federal Copyright Act of 1928 provided that an author would have the "exclusive" right to publish, reproduce and derive profits from his work. This right was meaningless inasmuch as the author was compelled to publish and print his work in socialist organizations all of which were state-controlled. The 1961 Act, therefore, brought Soviet copyright law into line with actual practice and deleted the word "exclusive" from Section 98 of the 1961 Act. The 1973 amendments further restrict the authors' rights by adding a section which provides that the procedure by which a Soviet author assigns the right to use his works abroad will be established by the central government. Section 101 of the 1961 Act provides that such assignment can only be by contract between the author (and his heirs) and foreign publishers, drafted in conformity with existing Soviet legislation. The new legislation substitutes the author's "legal representatives" as a party to the contract rather than his heirs. "Legal representatives" in this case probably refers to an appropriate official of a competent government organ, although this is not at all certain. It seems clear, however, that Section 101 provides the means by which official Soviet control will be maintained over the types of works Soviet authors will be permitted to publish abroad. More significantly, Section 101 is amended to cover not only authors' works, but translations of such works into a foreign language.

12. Section 105--Duration of Copyright: The new legislation amends Section 105 of the 1961 Act to provide for a copyright protection for the duration of the author's life plus 25 years, except that in the cases of photographs and works of art, the various union-republics can reduce the copyright duration period to as low as 10 years. The 1961 Act did not guarantee a specific period of protection, leaving the question entirely up to the union-republics. The 1928 Federal Copyright Act specified a 15-year period of protection. The rights of

heirs in unexpired copyright terms is also a matter for the union-republics to decide.

13. Sections 96 (subject of copyright), 99 (coauthorship), 100 (permitting copyright in works produced on official duty), and 104 (consent of author not required as long as royalties are paid) of the 1961 Act were not amended by the recent legislation.

14. With the above changes in mind, the following recommendations are offered with regard to the questions posed in paragraph 3 of referent memorandum.

(a) If in fact MacMillan, Inc., is the authorized foreign legal representative of the USSR for translating, publishing and selling the Large Soviet Encyclopedia, under Section 97, as amended, they are entitled to copyright protection. In this case [] would be risking a STATSPEC suit for copyright infringement by continuing to offer translations of the encyclopedia for public subscription (Sections 97 and 102).

(b) The same reasoning would seem to apply in other cases where a U.S. publisher is assigned copyright rights as a foreign legal representative of a Soviet author or firm.

(c) With respect to [] English translation of copyright publications, it would seem that dissemination would have to be restricted to official use without public subscription, unless [] received appropriate consent in accordance with Section 102, as amended. STATSPEC
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Assistant General Counsel

JGB:ks

Distribution:

Original - Addressee

✓ - COPYRIGHT w/background (OGC 73-0511 & 0558)

1 - [] Signer

1 - Chrono

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30 March 1973

MEMORANDUM FOR: Office of General Counsel

SUBJECT : Soviet Copyright Property Rights

1. Attached is a memorandum concerning the worldwide license Macmillan, Inc. has obtained from the Soviet Government for translating, publishing and selling an English-language, copyrighted version of the Large Soviet Encyclopedia.

2. [] publishes biographies from that encyclopedia and offers them for public subscription through [] This [] what led Macmillan to [] As this material has a very limited readership we could, if necessary, withdraw it from public subscription and make controlled dissemination within the intelligence community.

3. Guidance is requested on the following points:

a. [] answer Macmillan, Inc. on this problem?

b. What our position should be if other U.S. publishers obtain licenses from the USSR Government to translate and publish Soviet journals and monographs and want royalty payments []

c. If only the licensed, English translation by Macmillan or some other company is copyrighted, would there be any restrictions on the dissemination of [] [] English translation from the original Russian? If the Soviets provided an English copy of a publication, would there be any restrictions on an English translation of the same publication if made by us from the original Russian?

Attachment: a/s